

Gaynor



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: LinCom Corporation--Request for Reconsideration

File: B-231806.2

Date: August 10, 1988

DIGEST

Where a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office must be filed within 10 working days of actual or constructive knowledge of initial adverse agency action in order to be timely. Protester's continued pursuit of protest with contracting agency, while that agency was processing requests for further information and while, the protester thought, the agency may have been investigating the matter further, does not alter this result.

DECISION

LinCom Corporation requests that we reconsider our June 27, 1988, dismissal of its protest under request for proposals (RFP) No. DCA100-87-R-0132, issued by the Defense Communications Agency (DCA) for technical analysis and evaluation of clock error data collected by the Naval Observatory. We dismissed the protest as untimely pursuant to section 21.2(a)(2) of our Bid Protest Regulations, 4 C.F.R. part 21 (1988), which requires that a protest be filed no later than 10 working days after the basis of protest is known or should have been known, whichever is earlier.

We affirm our dismissal of the protest as untimely; however, the record now shows that the proper basis for dismissal was section 21.2(a)(3) of our Regulations, which requires that, where a timely protest was filed with the contracting agency, any subsequent protest to our Office must be filed within 10 working days of actual or constructive notice of initial adverse agency action.

DCA issued the RFP on June 25, 1987. LinCom received notification that the contract had been awarded to Ball on May 25, 1988. By letter of May 31, LinCom filed a protest

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of the award with the contracting agency, alleging that the selection decision was inconsistent with the solicitation's evaluation scheme, which placed primary emphasis on the offeror's technical ability to satisfy contract requirements, and that Ball's cost proposal demonstrated a lack of understanding of what is to be accomplished in the study.

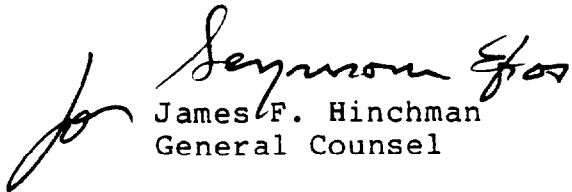
On June 2, DCA provided LinCom with a debriefing via telephone. During the debriefing, LinCom was informed that, among other things, the DCA technical team had concluded that all offers were technically equal and that the award was made based on price. LinCom did not file its protest with our Office until June 27 (by letter of June 24). We dismissed the protest because LinCom specified that it was based on the June 2 debriefing, as well as knowledge the firm gained earlier in the procurement process, so that the filing was more than 10 working days after the basis for protest was known to LinCom.

In requesting reconsideration, LinCom points out that it had in fact earlier filed a protest with DCA, and that the protest to our Office therefore should be considered timely since it was filed within 10 working days of initial adverse DCA action as required by section 21.2(a)(3) of our Regulation. LinCom explains that it did not have any reason to believe that there had been any adverse agency action until June 24, when DCA told LinCom that no further action on LinCom's protest would be taken, although some of the data LinCom had requested earlier would be furnished.

LinCom's protest to our Office clearly was untimely under section 21.2(a)(3), since the June 2 debriefing constituted initial adverse agency action in LinCom's protest to DCA. Initial adverse agency action is the first action, or inaction, by an agency that is prejudicial to the position taken in a protest at that level. See Pierce Coal Sales International--Request for Reconsideration, B-218003.2 Feb. 25, 1985, 85-1 CPD ¶ 236. DCA's June 2 advice to LinCom clearly conveyed the agency's intent to act in a manner contrary to the protester's perceived interests. Indeed, LinCom's protest letter evidenced the firm's understanding of that fact since, as stated above, LinCom itself stated that the last event on which it protest to our Office was based was the June 2 debriefing. Neither the fact that LinCom thought it was appropriate either to wait for DCA to furnish its requested documents before appealing to our Office, nor the firm's decision to continue to pursue the matter with DCA in hopes that the agency would change its adverse decision, toll the time within which LinCom was

required to file a protest here. See H.A. Ekelin & Assoc.,
B-228972, Oct. 5, 1987, 87-2 CPD ¶ 338; Instrument Control
Service, B-216539, Nov. 6, 1984, 84-2 CPD ¶ 507.

Since LinCom has failed to show that our prior dismissal was
erroneous, the dismissal is affirmed. 4 C.F.R. § 21.12.


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